KASSIM OLI MOHAMED v. NOORDIN & ANOR.

[O.C.J. (Choor Singh J.) May 11, 1967]

[Singapore — Suit No. 990 of 1961]

Land — Injunction to restrain defendants from remaining on premises — Claim of adverse possession — Statute of limitation — Limitation Ordinance, 1959.

The plaintiff purchased from the 1st defendant and his brother *B.* the land comprised in Lot 103 Mukim XXVII, sometime in 1954. There were 9 Malay type houses on this land, one of which was No. 70, Jalan Haji Salam (hereinafter called the said premises). All the other 8 houses were owned by their occupants who paid a ground rent of $5 per month each to the plaintiff. The conveyance in favour of the plaintiff however only referred to the said premises.

The plaintiff now claimed for a declaration that the defendants were not entitled to remain on the said premises and for an injunction to restrain them from remaining thereon. The first defendant did not enter an appearance and judgment was obtained against him by the plaintiff. The second defendant's defence was that he was the lawful owner of the said premises, having acquired under the Limitation Ordinance a statutory title to it by adverse possession for over 12 years and he counterclaimed for a declaration that he was the lawful owner of the said premises. There was overwhelming evidence at the hearing that the house was constructed in 1931 or thereabouts by the 2nd defendant's father with the permission of the 1st defendant's father who was then the owner of the whole of Lot 103 Mukim XXVII and that the 2nd defendant became the owner of the house after the death of his father in 1934. It was also clear from the evidence that the 1st defendant and his brother *B* had no right to sell the house to the plaintiff.

Held: (1) the evidence in this case established beyond reasonable doubt that right up to 1954 when he sold Lot 103 Mukim XXVII to the plaintiff, the 1st defendant was in possession of all the land comprised in Lot 103 Mukim XXVII. Although the 1st defendant and before him his father had permitted others to build houses on the said land, neither the 1st defendant nor his father had intended to discontinue ownership of that portion of the land comprised in Lot 103 Mukim XXVII;

(2) in this case there was no evidence that the 1st defendant had been dispossessed and kept out of some portion of the land comprised in Lot 103 Mukim XXVII. The 2nd defendant had never effectively excluded the 1st defendant or his father from the land now claimed by him;

(3) the 2nd defendant was on the 1st defendant's land by leave and licence and such user of the land was not of a nature or quality which would, amount to an ouster by the 2nd defendant of the 1st defendant from his possession;

(4) the plaintiff's claim for the declaration and injunction should be refused but the plaintiff's claim for ground rent was justified because he had in 1954 demanded rent from the 2nd defendant and had thereby determined the 2nd defendant licence to stay on the land free of rent. The plaintiff was entitled to rent at $5 per mensem from August 1955 to May 1967 amounting to $710.

Cases referred to:—

(1) *Kynoch Ltd.* v. *Rowlands* [1912] 1 Ch. 527 at p. 533.

(2) *Jones* v. *Chapman* (1847), L.R. 2 Ex. 803, 821.

CIVIL SUIT.

Y. R. Jumabhoy for the plaintiff.

N. C. Goho for the 2nd defendant.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiff's claim is for a declaration that the defendants are not entitled to remain on his premises known as No. 70 Jalan Haji Salam. Singapore, and for an injunction to restrain them from remaining on the said premises.

The first defendant has not entered an appearance and the plaintiff has already obtained judgment against him. The second defendant's defence is that he is the lawful owner of the said premises, having acquired under the Limitation Ordinance a statutory title to it by virtue of his having been in uninterrupted adverse possession for over 12 years and he counterclaims for a declaration that he is lawful owner of the said premises.

The plaintiff purchased in 1954 from the first defendant and his brother Beedin the land comprised in Lot 103 Mukim XXVII which has an area of 2 acres 2 roods and .03 poles. There are nine "Malay type" houses on this land and one of them is No. 70 Jalan Haji Salam which is the subject matter of these proceedings. In 1954 this house was known as No. 556-C Jalan Haji Salam and before that as 556-C Tanah Merah Kechil. I shall hereafter, for convenience, refer to it as "house No. 556-C". All the other houses on Lot 103 are owned by their occupants who pay a ground rent of $5 per month each to the plaintiff. By their conveyance dated the 30th July 1954, the first defendant and his brother Beedin conveyed to the plaintiff all the land comprised in Lot 103 "together with the house erected thereon and known as 556-C Jalan Haji Salam, Singapore." The conveyance gives the address of the first defendant as 556-C Tanah Merah Kechil, Singapore.

The plaintiff's evidence is that he inspected the property before he purchased it; that he was shown around the property by the first defendant; that the first defendant took him to his house which was numbered 556-C; that the first defendant told him that he was selling the property with vacant possession of house No. 556-C; that after the completion of the sale the first defendant failed to move out of house No. 556-C and asked for time to move out; that later the first defendant brought the second defendant to him and introduced him as a relative who wished to rent house No. 556-C; that he offered to rent it to the second defendant at a rental of $25 per mensem; that the second defendant offered to pay ground rent of $5 per mensem which he did not accept; that thereafter he left for India; that while he was away in India the second defendant wrote a letter to him offering to pay

rent for house No. 556-C; that upon his return from India both defendants came to see him and renewed their request that house No. 556-C be rented to the second defendant; that he again demanded a rent of $25 per mensem; that both defendants then left saying they would think the matter over and that eventually he commenced these proceedings.

The first defendant's evidence is that the house which was sold to the plaintiff together with the land comprised in Lot 103 was another house which was numbered 556; that he never sold house No. 556-C to the plaintiff; that at the time of the sale he was residing in houses No. 556 and not in house No. 556-C; that house No. 556-C belongs to the second defendant; that after the sale he moved out of house No. 556 and resided in house No. 556-C as a guest of the second defendant until 1962; that he never took the second defendant to see the plaintiff at any time and that the second defendant never offered to pay a ground rent of $5 per mensem to the plaintiff.

The second defendant's evidence is that house No. 556-C was built by his father in 1931 when he was 13 years old; that it was built with the permission of the first defendant's father who was the then owner of the land; that he became the owner of the house upon the death of his father in 1934; that neither his father nor he has ever paid any ground rent for the land on which the house stands; that the house is registered in his name with the Property Tax Department; that he has been paying property tax on the house; that the first defendant came to live with him after he sold his land; that before that the first defendant lived in house No. 556 which is another house on Lot 103; that the first defendant did not take him to see the plaintiff at any time; that he has never requested the plaintiff to rent house No. 556-C to him; that he has never offered to pay ground rent to the plaintiff and that he has never written any letter to the plaintiff asking him to rent the house to him.

Six other witnesses, all of whom have lived on Lot 103 for long periods of time, have given evidence in this case and all of them say that house No. 556-C belongs to the second defendant. Even the plaintiff's witness, Awang, says that it is the second defendant's house and that he has seen him living in this house as far back as 1945. In my opinion the evidence is overwhelming that house No. 556-C was constructed in 1931 or thereabouts by the second defendant's father with the permission of the first defendant's father who was the then owner of Lot 103 and that the second defendant became the owner of this house after the death of his father in 1934. The plaintiff is in no position to contradict this evidence because he purchased Lot 103 as recently as 1954. Nor has he produced any evidence to show how and when the first defendant and his brother Beedin became the owners of this house. The plaintiff relies entirely on his title deed and on his own evidence that when he purchased the property he saw the first defendant living in house No. 556-C. I hold on the evidence before me that the second defendant is the owner of house No. 556-C and that the first defendant and his brother Beedin had no right to sell it to the plaintiff.

The real issue in this case is whether or not the second defendant has acquired a possessory title to the land on which house No. 556-C stands. Counsel for the second defendant submits that the second defendant had acquired a statutory title to the said land long before the plaintiff's purchase of Lot 103 in 1954 because neither the second defendant nor his father before him had ever paid any ground rent during the years 1931 to 1954, a period of 23 years. Counsel relies on section 9(1) of the Limitation Ordinance which provides that no action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, to that person. Under section 10(1) of the Ordinance a right of action is deemed to have accrued on the date of any dispossession or discontinuance. Two questions therefore arise: first, has there been a discontinuance of possession by the landowner and secondly, has there been dispossession of the landowner by the second defendant? The first of these questions presents no difficulty. The evidence in this case establishes beyond all doubt, that right up to 1954 when he sold this property to the plaintiff, the first defendant was in possession of all the land comprised in Lot 103. He lived on this land and although he had permitted, and before him, his father had permitted, others to build houses on this land, I am satisfied that neither he nor his father had ever intended to discontinue ownership of any portion of the land comprised in Lot 103.

The real question therefore is whether, on the facts as they are found and known, there was dispossession of the landowner by the second defendant at any time prior to 1954. In deciding whether there has been dispossession, the nature of the property and the nature of its use by the person claiming adverse possession must be looked at. In this case the land claimed is part of a larger piece of land which has nine small houses on it, built with the permission of the owner of the land. And if the owner of the whole piece of land lives in one of these houses on his land, he is undoubtedly in possession of the whole land unless of course it can be shown that he has been dispossessed and kept out of some portion of the land. In my opinion there is no such evidence in this case. The second defendant has never effectively excluded the first defendant or his father from the land now

claimed by him. The second defendant in fact allowed the first defendant to live in house No. 556-C from 1954 to 1962. Prior to 1954 the second defendant had never fenced off or demarcated the area of land claimed by him. He did not do a single act capable of being treated as sufficient to dispossess the first defendant. In fact prior to 1954 the second defendant never, as far as I can see, had any intention, nor claimed any intention, of asserting any right to the possession of the land now claimed by him. The plaintiff's evidence, which I accept, that the second defendant saw him shortly after he had purchased the land and offered to pay $5 per mensem as ground rent, proves conclusively that the second defendant never had prior to 1954 any intention of asserting any right to the possession of the disputed land. The second defendant is relying entirely on the fact that neither he nor his father before him has ever paid any ground rent for the land on which house No. 556-C stands. In my opinion that is insufficient in this case to dispossess the owner of the land. The second defendant and his father were permitted to come on the land in 1931 by the first defendant's father who was the then owner of the land. They were permitted to put up house No. 556-C on terms that no ground rent need be paid. The second defendant and his father became licensees of the first defendant's father. The non payment of rent by the second defendant and by his father before him is in accordance with the licence granted to them and is not something which is adverse to the landowner's interests.

Furthermore it is clear law that both parties, that is, the first defendant as the landowner and the second defendant as the squatter could not have been in possession at the same time of the land in dispute. As was observed by Joyce J. in *Kynoch, Limited* v. *Rowland*,[1] at page 533:—

> ". . . Possession is single and exclusive. As the Romans said, *'plures eandem rem in solidum possidere non possunt'*; and it is a well-settled principle with reference to land at all events, and, I think, also with reference to chattels, that where possession in fact is undetermined or the evidence is indecisive, possession in law follows the right to possess. As far back as the time of *Littleton* it was said: 'Where two be in one house or other tenements together to claim the said lands and tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession that hath right to have the possession of the same tenements.' (See *Pollock and Wright* on Possession, pp. 20, 24). In the important leading case of *Jones* v. *Chapman*, (1847), 2 Ex. 803, 821, Maule J., giving a most instructive judgment said: 'If there are two persons in a field, each asserting that the field is his, and each doing some act in the assertion of the right of possession, and if the question is, which of these two is in actual possession, I answer, the person who has the title is in actual possession, and the other person is a trespasser'."

The above statement of the law was approved by the Court of Appeal, Cozens-Hardy M.R. observing: "I do not think I can possibly improve upon what was said by the learned judge on the law."

The second defendant was on the first defendant's land by leave and licence and such user of the land was not of a nature or quality, in my judgment, which would amount to an ouster by the second defendant of the first defendant from his possession. There is the clear evidence of the first defendant that he was in possession of his land up to the time he sold it and that if any of the persons who had built houses on his land had tried to deprive him of any portion of it, he would have seen that that person "was kicked out first". In all the circumstances it seems to me that the cumulative effect of the evidence is to make it quite impossible to say that there was actual possession in the second defendant of a nature that ousted the first defendant from possession or excluded him from possession of the land now claimed by the second defendant. And the limitation period cannot commence to run unless and until the true owner ceases to be in possession of his land.

Counsel for the second defendant submits that when the second defendant's father put up house No. 556-C he was granted a tenancy at will by the first defendant's father of the land on which the house was erected; that the said tenancy at will must be deemed to have been determined at the expiration of a period of one year from its commencement in accordance with the provisions of section 13(1) of the Limitation Ordinance; that accordingly the right of action of the person then entitled to the land, namely, the first defendant's father, must be deemed to have accrued at the date of such determination and that as no action was brought to recover the land by the first defendant's father nor by the first defendant for a period well over twelve years, the right and title of the first defendant and his brother Beedin to the land under dispute was extinguished long before 1954 when they purported to convey the said land to the plalintiff. I do not accept this submission. The second defendant is now claiming an area of 7,619 square feet whereas the built up area of his house is only 2,000 square feet. According to the plan attached to his statutory declaration made in 1961 the area of 7,619 square feet is made up of the built up area plus a clearance of 25 feet all round his house. Section 13 of the Limitation Ordinance only applies where there is a relationship of landlord and tenant between the person entitled to the land which is the subject of the tenancy and the person who is the tenant at will of the said land. In this case no such relationship was created between the first defendant's father and the second defendant's father in 1931 when house No. 556-C was erected. The second defendant's father became a mere licensee of the first defendant's father. All he

had was permission to build a house on Lot 103 and therefore he was a mere licensee, having acquired no equitable title to the land. He was not put into occupation of any defined or demarcated area. There is no evidence that the area of 7,619 square feet now claimed by the second defendant was allotted to or occupied exclusively by his father. There were others who had, with permission, built houses on Lot 103. Furthermore the landowner also lived on Lot 103 and he had access to every nook and corner of his land. There is the evidence of the witness Awang that the landowner plucked coconuts from all the trees on Lot 103. In my opinion the landowner was not only in possession but also in occupation of all his land although some portions of it were being used by others with his permission. The second defendant's father did not have that sort of exclusive occupation to constitute a tenancy at will. He was there with the acquiescence and sanction of the landowner but he was not a tenant at will and certainly not of 7,619 square feet. It follows therefore that section 13 of the Limitation Ordinance has no application.

The burden of proof on the second defendant's claim to ownership of the land in dispute is clearly on him and in my opinion he has failed to discharge the burden. I therefore hold that the title of the plaintiff to the said land is not barred by the Limitation Ordinance. The result is that I entirely reject the second defendant's claim to have acquired ownership of the said land and his counterclaim is therefore dismissed.

As regards the plaintiff's claim, in my opinion he is not entitled to the declaration and injunction which he seeks because I have held that he is not the owner of house No. 556-C. But the plaintiff also claims damages and counsel for the plaintiff submits that if the court holds that the second defendant's father built the house in question, then there must be an order that the second defendant do pay ground rent from the 30th July 1954 up to the date of judgment. In my opinion the plaintiff's claim for ground rent is justified because he had in 1954 demanded rent from the second defendant and had thereby determined the second defendant's licence to stay on the land free of rent. The other ground tenants are paying $5 per mensem and I see no reason why the second defendant should not pay the same amount. There will be an order that the second defendant do pay the plaintiff $5 per mensem as ground rent in respect of the land occupied by him. The period for which arrears of rent or damages in respect thereof can be recovered is limited to six years by section 20 of the Limitation Ordinance. As these proceedings were commenced on the 8th August 1961 the plaintiff cannot recover rent for any period prior to August 1955. The plaintiff is entitled to rent at $5 per mensem from August 1955 until May 1967 which amounts to $710. Accordingly there will be judgment for the plaintiff against the second defendant in the sum of $710 and costs as taxed.

Plaintiff's claim for declaration and injunction disallowed; judgment for plaintiff for ground rent.

Solicitors: *Mallal & Namazie; S. C. Goho & Co.*

SHARIKAT BAKTI v. AMAR SINGH

[O.C.J. (Pawan Ahmad J.) May 16, 1967]

[K.L. — Civil Suit No. 411 of 1966]

Land — Possession claimed for unlawful occupation — Paying of rent to a third person — Whether agent of the owners — Question of fact — Owner's conduct when amounts to estoppel.

The plaintiffs having puchased a piece of land at a public auction from Mohamed Isa and Habsah the joint administrator and administratrix of the estate of one Jamiah, discovered that defendant was in unlawful occupation of seven temporary houses on the land. The defendant claimed that he was in lawful occupation of the said land by regularly paying rent to one Mohamed Junid. As a result of this dispute the plaintiffs commenced the present action against the defendant. At the trial counsel for both parties agreed that the court need only decide the following two issues: (1) whether Mohamed Junid was authorised as agent to grant tenancy and bind the estate, (2) if Mohamed Junid acted without authority, whether the conduct of silence for more than ten years by administrators would estop them from denying that the defendant was the tenant.

The burden of proving the first issue was on the defendant to prove that Mohamed Junid was agent of the estate in creating a lawful tenancy which would bind them.

Held: an administrator derives his title from the court and has no title until letters of administration are granted to him. However, once letters of administration have been granted the administrator may ratify acts done after the death but before the grant and for the benefit of the estate. In the present case there was no direct evidence to show that Mohamed Isa or Habsah had at any time either before or after the grant of letters of administration expressly authorised the defendant to occupy the said land. There was also no direct evidence that they appointed Mohamed Junid as their agent in the transaction entered into between Mohamed Junid and the defendant or that that transaction was subsequently expressly ratified by any of them. Moreover, the subsequent acts and conduct of Mohamed Isa after the grant of the letters of administration clearly proved that he intended to take action against all the unlawful occupants of the said land. Nor could it therefore be said that from the conduct of Mohamed Isa it could be inferred that he had ratified the transaction entered into by Mohamed Junid with the defendant. Therefore, on the balance of probabilities, the defendant had failed to discharge the burden of proof on the first issue.

On the second issue for the defendant to succeed he must establish a state of facts which would estop the administrators from denying the tenancy of the defendant.

Held: Mohamed Isa did not know that the defendant was paying any ground rent to Mohamed Junid. In the circumstances there was no duty on the part of